No. 100296-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of

LI'ANTHONY WILLIAMS,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF IN THE WASHINGTON STATE SUPREME COURT

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I. INTRODUCTION

Petitioner's PRP was transferred to this Court by the Acting Chief Judge of Division II of the Court of Appeals on October 13, 2021. On February 3, 2022, Chief Justice Gonzalez issued an Order directing the parties to file Supplemental briefs.[1]

Petitioner will rely on his First Supplemental Opening Brief in Support of PRP, filed in the COA on December 29, 2020, and his Reply to Brief of Respondent, filed in the COA on July 1, 2021. Petitioner will also be relying on the Declaration of David Allen in Support of PRP with Appendices, filed in the COA on June 22, 2017.

[1] The Order further directed the Petitioner to file an Answer by February 13, 2022, to the Respondent's Motion to Dismiss as an Untimely or Mixed Petition. This Order stated that the issue presented in the motion to dismiss "is passed to the merits and will be addressed in the Court's opinion." Petitioner will rely on his Answer to the Motion to Dismiss and will therefore not re-address those issues in this brief.

II. A LIFE SENTENCE FOR A JUVENILE COMMITTING A RELATIVELY MINOR CRIME VIOLATES THE 8TH AMENDMENT AND ARTICLE 1, SEC. 14

1. RCW 9.94A.507 Demonstrates That the Legislature Did Not Intend That the Harsh Effects of the Indeterminate Sentencing Law be Applied to a Juvenile Offender who Commits a Relatively Minor Felony with Sexual Motivation and Sentencing a Juvenile to a Life Sentence Under This Statute is Unconstitutional Under Article 1, Sec. 14 and the 8th Amendment.

The indeterminate sexual assault sentence statute, RCW 9.94A.507(2) "Sentencing of Sex Offenders" (hereinafter .507) provides that, for certain sex crimes where adults would be facing lifetime indeterminate sentences, juveniles should not be subject to this harsh punishment:

> An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

Id.

Through an obvious oversight by the Legislature, the exemption provided by RCW 9.94A.507(2) applied only to those

crimes listed in that subsection and not to Assault 2° charges with "sexual motivation" (hereinafter "SM") allegations (*see* RCW 9.94A.507(1)(a)(ii)), which depending on the facts of the particular case, might be much less serious allegations.[2]

It seems absurd that the Legislature would carve out an exception for children who are convicted of rape of a child in the first or second degree or child molestation in the first degree, but not apply this same exception to Assault 2° with the SM label that is much less serious, especially where there was no physical contact. This is especially the case when one objectively compares the underlying facts of the instant case to those of *Domingo-Cornelio*. 196 Wn.2d 255 (2020).

The only logical explanation for this is that it was an oversight by the Legislature. And, this being one of the earliest

[2] An example of the operation of this exemption is found in *In re PRP of Domingo-Cornelio*, 196 Wn.2d 255, 260 (2020), where the defendant, who was convicted of rape of a child 1° and three counts of child molestation, got the benefit of this provision because he was under 18 at the time of these crimes. He therefore received a SRA determinate sentence, albeit a very lengthy one.

cases that was sentenced under the then-new .507 statute, Petitioner's attorney clearly did not realize the harsh effects of this law, as shown by the colloquy during the sentencing hearing where he candidly admitted to the judge that he was "not sure [he] had an understanding" as to how the new sentencing law works. Allen Decl. in Support of PRP (filed in COA), App. C, p. 3 (sentencing colloquy).

Certainly, at the time that the plea was entered, no one could have predicted how the ISRB would be dealing with cases such as this. From the record, it seems as if everyone involved, including the judge and prosecutor, intended that Petitioner be released from custody within a short period of time. *Id.* Yet, he remains incarcerated 20 years later.

The State's efforts in it's Brief of Respondent (filed in the COA) at pp. 5-6 to explain this anomaly are unpersuasive. The State seeks to justify this on the basis that Rape of a Child and Child Molestation crimes "are committed by status, not force." When the .507 juvenile offender exempt sex crimes, such as Rape

of a Child 1° and Child Molestation 1°, are compared to the charge and facts in the instant case, this is a distinction without a difference.

Instead, it seems obvious that the Legislature was concerned with having juveniles face the harsh effects of .507 and intended to shield them from the indeterminate sentencing law. Unfortunately, the Legislature clearly did not consider the injustice of a life sentence caused by adding the SM tag to an otherwise class B felony.[3]

This court should hold that .507 is unconstitutional when applied to a juvenile offender, such as Petitioner, on the ground that it violates Article 1, Sec. 14.

[3] The level of Assault 2° is increased from a class B to A felony when SM is alleged, as occurred here. RCW 9A.36.021(2)(a)(b). The SM enhancement also was the ground for the .507 indeterminate sentence.

2. Respondent's Argument That Because the ISRB Has Discretion to Parole the Petitioner, This Prevents This Court from Applying the *Houston-Sconiers* Remedy, is Flawed and Goes Against a Long Line of This Court's Precedents

Respondent makes a specious argument in its COA brief that if this Court holds that a sentencing court is not permitted to sentence a juvenile to a maximum of life under .507, or has the discretion to impose an SRA standard range sentence, this will improperly usurp the ISRB's authority. *State v. Houston-Sconiers*, 188 Wn.2d 1 (2017), rejected the State's contention that the possibility of future release on parole by the ISRB under the "*Miller*" fix (*See*: RCW 9.94A.730 and 10.95.030(3)(a)(ii)) was a sufficient remedy that cured any 8th Amendment's Cruel and Unusual Punishment prohibition:

> Critically, the Eighth Amendment requires trial courts to exercise this **discretion at the time of sentencing itself, regardless of what opportunities for discretionary release may occur down the line**. (Emphasis added.)

Id. at 20.[4] A sentencing court has complete discretion when sentencing 18, 19 or 20 year old defendants, "even when faced with mandatory statutory language." *In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 311 (2021).

As this court emphasized in *Houston-Sconiers*: "criminal procedure laws that fail to take defendants' youthfulness into account at all [are] flawed." 188 Wn.2d at 8. .507 imposes life sentences on all juveniles convicted of Assault 2° with SM even where the facts demonstrate relatively minor assault, as in the instant case. This categorically constitutes cruel punishment under Article 1, Sec. 14 because the sentences do not take youthfulness into consideration at the time of sentencing.

The sentencing court in the instant case did not consider Petitioner's youthfulness at all, instead deferring completely to the ISRB. *Houston-Sconiers* requires sentencing courts to not

[4] Petitioner's First Supplemental PRP raises both 8th Amendment and Article 1, Sec. 14 grounds. Because Article 1, Sec. 14 is broader than the 8th Amendment, Petitioner will focus on that provision, although both grounds are raised.

only consider mitigating qualities of the defendant's youth, but to determine whether those qualities warrant an exceptional sentence down from the standard sentence. The sentencing judge in Mr. Williams' case did neither, therefore rendering his sentence unconstitutional. *Domingo-Cornelio*, 196 Wn.2d at 262.

The imposition of a .507 sentence for a class A felony committed by a juvenile, with a maximum term of life, followed by lifetime parole and sexual offender registration if Petitioner is ever paroled, for a relatively minor offense he committed as a juvenile where there was no weapon, no threat, minimal physical contact and no injury, categorically constitutes cruel and unusual punishment under the 8th Amendment and cruel punishment under Article 1, Sec. 14. *Graham v. Florida*, 560 U.S. 48 (2010) (life without parole sentences (hereinafter "LWOP") for juvenile convicted of non-homicidal crimes categorically violates the 8th Amendment); *State v. Bassett*, 192 Wn.2d 65 (2018).

3. The Fact That the Sentencing Judge Agreed to Impose the Lowest Minimum Sentence Possible Creates a Presumption That He Would Have Been Willing to Consider Mitigating Factors Justifying a Lower Maximum Sentence Had He Known He Had Discretion, Thereby Demonstrating That Petitioner Was Actually and Substantially Prejudiced.

Where the sentencing court does not meaningfully consider youth and exercise discretion to impose a lower maximum sentence under .507, a life sentence for a juvenile committing a relatively minor crime constitutes cruel punishment.[5]

Houston-Sconiers stressed that *Miller v. Alabama*, 567 U.S. 460 (2012) required that in exercising full discretion in juvenile sentencing, a court must consider mitigating circumstances related to the defendant's youth—including age and its "hallmark features," such as the juvenile's "immaturity, impetuosity, and failure to appreciate risks and consequences."

[5] Consistent with Domingo-Cornelio's counsel in *In re Domingo-Cornelio*, 196 Wn.2d 255 (2020), in the instant case Petitioner's counsel likewise did not argue any mitigating factors relating to youthfulness or request a downward exceptional sentence.

Houston-Sconiers, 188 Wn.2d at 23, *quoting* from *Miller*, 567 U.S. at 477. The sentencing court must also consider factors such as the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, "the way familial and peer pressures may have affected him [or her]," and how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated. *Houston-Sconiers*, 188 Wn.2d at 23.

The requirement that a Petitioner must show substantial prejudice as well as constitutional error is easily demonstrated here. *See*: *State v. Cook*, 114 Wn.2d 802, 810 (1990). There is a high probability that the trial judge would have taken into account Williams' youth especially given the particular facts of the offense which clearly demonstrate his impetuousness, immaturity and judgment.

While *Houston-Sconiers* established that a sentencing court has discretion to depart from the SRA as well as mandatory

sentencing provisions, the defendant's attorney, the prosecutor, and the judge all deferred to the ISRB to ultimately determine the length of Mr. Williams' sentence without any consideration that he was a juvenile or the actual facts of his case. Allen Decl., App. C, pp. 4-5.[6] The judge clearly believed he had no discretion but to impose a life sentence. The prejudice is obvious.

4. The Crime That Defendant Committed Was Relatively Very Minor and So Disproportionate to the Sentencing He Received That It Constituted Cruel Punishment Under Article 1, Sec. 14 of the Washington Constitution and the 8th Amendment of the United States Constitution.

a. <u>Respondent misquoted facts in its COA Brief of Respondent</u>

Because this was a *State v. Newton*, 87 Wn.2d 363 (1976) plea, the record of the facts of the crime are contained in the Declaration of Determination of Probable Cause signed under oath by the prosecutor, which was reviewed by the sentencing

[6] The court, because of the Petitioner's youth and immaturity, explained the legal financial obligations and treatment obligations to his mother rather than to him at sentencing. Allen Decl., App. C, pp. 9-10.

judge to determine a factual basis for the plea. *See* Declaration of David Allen, App. A (Declaration of Determination of Probable Cause); App. B (VRP of Feb. 5, 2002 Change of Plea Hearing), p. 8.

Respondent, at page 3 in the Brief of Respondent (filed in the COA) relying on the same Declaration of Determination of Probable Cause, (which was also attached as the Appendix to her brief at page 003), wrote "Petitioner reached under the divider and grabbed her [the victim] by the leg."

However, the Determination of Probable Cause affidavit does not support this. Instead, it clearly states that "the person reached under the stall again and **tried** to grab her leg; she stomped on the hand and left the rest room . . ." (Emphasis supplied.) There were no reports provided to the sentencing court at the change of plea hearing that alleged that Petitioner grabbed the victim's leg, as the Respondent claims, or that his hand actually came in contact with her body.

The undisputed facts in this case demonstrate that the crime for which Petitioner was sentenced was a relatively minor crime in proportion to the class A life sentence he received. The sentence was clearly disproportionate to the facts of the case, and violated Article 1, Sec. 14.

There was no evidence that Petitioner was armed with a firearm, knife or other deadly weapon; force was not threatened; there were no threats; while there was a solicitation for sex, this was not illegal because money was not offered and the recipient was over the age of consent (*State v. Luther*, 65 Wn.App. 424, 428 (1992)); the petitioner's hands made no contact with her body; he did not try to enter her stall; and, she suffered no physical injuries. When compared with other reported juvenile sentencing cases, the facts here show a relatively minor crime that might often be charged in other counties as an Assault 4°, a gross misdemeanor, which even with a SM tag, only carries a maximum 12 month county jail sentence, with 1/3rd potentially off for good behavior.

b. <u>The life sentence imposed constitutes cruel punishment under both the categorical and disproportionality tests.</u>

The Washington Constitution's Article 1, Sec. 14, is broader and provides more protection than the 8th Amendment of the United States Constitution, especially when juvenile sentencing is at issue. *Stat v. Bassett*, 192 Wn.2d 67, 82 (2018).

In deciding whether a .507 life sentence for a juvenile committing a non-homicidal crime constitutes cruel punishment under Article 1, Sec. 14, a court must consider two issues. First, whether the sentence is categorically unconstitutional. Secondly, assuming that the sentence is not categorically unconstitutional, whether the sentence is grossly disproportionate to the offense under the four "*Fain*" factors. *State v. Moretti*, 193 Wn.2d 809, 818-19 (2019). As will be shown, Petitioner's sentencing constitutes cruel punishment under both tests.

Graham v. Florida, *supra*, holds that a LWOP sentence for a juvenile committing a non-homicidal crime categorically violates the 8th Amendment. *State v. Bassett*, *supra*, holds that

a juvenile's LWOP sentence for aggravated first degree murder categorically violates Article 1, Sec. 14.

Sentencing a juvenile offender who pleaded guilty to an Assault 2°, a crime with an SRA standard range of 3 to 9 months with a SM enhancement and a prior juvenile non-violent felony (*see* Assault 2° scoring sheet attached hereto as App. A) to a maximum life sentence under .507 is categorically cruel punishment. *State v. Bassett*, *supra*. This is especially clear when one considers that juveniles who are convicted of much more serious sexual crimes, such as child rape 1° and 2° and child molestation 1° are exempt from the indeterminate sentencing provisions of .507.

In *State v. Bassett*, *supra*, this Court utilized the categorical bar analysis rather than the proportionality test as authority to hold that a LWOP sentence for a juvenile convicted of aggravated first degree murder constituted cruel punishment under Article 1, Sec. 14. The Court explained that because the *Fain* proportionality test did not take into account characteristics

of a juvenile offender, that the categorical test was appropriate. *Id.* at 84.

Nevertheless, in total similarity with *Bassett* where the Court held that both tests were satisfied (192 Wn.2d at 90), Petitioner's life sentence constitutes cruel punishment under both of these tests.

As for the Article 1, Sec. 14 proportionality factors, *Moretti*, 193 Wn.2d at 830-31 (2019), directs us to the "*Fain*" factors. *Id.* at 830. In *State v. Fain*, *supra*, this Court held that the then three strikes habitual criminal statute which resulted in a life sentence was cruel punishment under Article 1, Sec. 14. In reaching this result, the Court considered the facts of the case which demonstrated the defendant's prior convictions consisted of three minor larcenies committed over a 17 year time period. *Id.* at 389.

In determining whether a sentence is disproportionate, the *Fain* Court explained:

> Proportionality is an illusive concept which has developed gradually in response to society's changes. As the United States Supreme Court has said in reference to the Eighth Amendment, its scope is not static; rather, it "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101, 2 L. Ed. 2d 630, 78 S. Ct. 590 (1958).

Id. at 396-97.

Fain identified four factors to be considered in determining whether a sentence was disproportionately cruel under Article 1, Sec. 14:

> (1) the nature of the offense; (2) the legislative purpose behind the habitual criminal statute; (3) the punishment defendant would have received in other jurisdictions for the same offense; and (4) the punishment meted out for other offenses in the same jurisdiction.

Id. at 397.

As for factor (1), the nature of the offense, an Assault 2° with intent to commit an unnamed felony, with SM, the undisputed facts have already been discussed *supra*, and

demonstrate that as felony sex crimes are measured, this was a relatively minor crime.

The legislative purpose (*Fain* factor 2) behind the statute was to take sexual offenders who commit very serious crimes out of the community and not release them until or unless they are considered parolable by the ISRB. However, as previously explained, *supra*, the Legislature also intended to spare juveniles from this sentencing scheme, although it inadvertently created a vortex by including SM enhancements, which Petitioner was caught in.

It is very difficult or impossible to compare other states sentencing schemes that would impose a life sentence on a juvenile for a minor sexual assault, as occurred here (*Fain* factor 3). As in *Fain*, counsel has reviewed sentencing schemes in surrounding states, including California, Oregon, Idaho and Montana and could not find any similar schemes for juveniles convicted of an Assault 2° with SM type crime. Nor, could counsel locate law review articles describing any similar

sentencing provisions indicating the Washington scheme elevating an Assault 2° from a class B felony to a class A with the SM enhancement appears to be peculiar to Washington State.

As far as punishment in the same jurisdiction, counsel has done a list-serv request to the Washington Association of Criminal Defense Lawyers and has not found any cases similar to Petitioner's, where a juvenile received a life sentence for a non-homicidal crime where actual physical contact did not occur.

Comparing Petitioner's sentence to others in this jurisdiction, (explained more fully in Petitioner's Supplemental Brief in the COA, at p. 13), Petitioner would have been released from prison two years ago with a short term of community custody, but no parole if he had been given a high end SRA sentence for Murder 2° and earned no good time credits in prison. This further demonstrates the disproportionality of Petitioner's sentence.

5. The Possibility of Release on Parole in the Future Cannot Justify an Article 1, Sec. 14 Cruel Sentence.

This Court has long recognized that the possibility of future parole cannot save an unconstitutional Article 1, Sec. 14 sentence. *Houston-Sconiers*, 188 Wn.2d at 23. Parole is less affected by the crime he committed, but instead by behavior in prison, which would have been especially difficult for Petitioner, a 17 year old child imprisoned and sentenced to life in prison:

> Finally, our cases and the foregoing statutory scheme reveal that Fain's chances of receiving parole have little to do with the crimes for which he was sentenced. Rather, his chances depend on his subsequent behavior in prison. Many forms of behavior, not criminal in the world outside the prison walls, may be grounds on which the parole board refuses to grant parole.

State v. Fain, 94 Wn.2d 387, 395 (1980).

In almost total similarity to the instant case, in *Fain*, *id.*, the State argued that this was not a life sentence because, like Petitioner here, there was the possibility that Fain might someday be paroled. *Id.* at 393. The *Fain* Court rejected this argument, explaining that "parole is simply an act of executive grace." *Id.*

at 393. And, "a prisoner has no right to parole," or release, before the expiration of a valid sentence. *Id.*[7]

6. <u>It is Patently Unfair for Respondent to Try to Justify Petitioner's Life Sentence on the Basis of His Juvenile Record or Prison Disciplinary Record.</u>

The Respondent tries to justify the life sentence by presenting evidence of other crimes the defendant was suspected of committing around the time of this incident. However, those other charges were never prosecuted, and the defendant never admitted to committing them. As such, the presumption of innocence remains and it is patently unfair for the State to try to justify the unconstitutional sentence in this case based on unproven allegations.

The same is true of using his prison disciplinary record to try to justify his life sentence. He has never been convicted of any crimes in prison and any allegations he violated prison rules cannot justify this life sentence.

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[7] The decision explains that Fain would be eligible for supervised parole in 10 years or even sooner. *Id*. at 393.

III. THE STATE MUST ALLEGE THE SPECIFIC FELONY THAT A DEFENDANT INTENDED TO COMMIT WHEN CHARGING ASSAULT IN THE SECOND DEGREE, AS OPPOSED TO AN ATTEMPTED BURGLARY CHARGE WHERE THE UNDERLYING CRIME IS NOT REQUIRED TO BE SPECIFIED

In *State v. Bergeron*, 105 Wn.2d 1 (1985) this Court held that while the second degree burglary statute, RCW 9A.52.030, contained an element that a defendant who unlawfully entered a building intended to commit a crime therein, the State was not required to designate the intended crime. Respondent, in its Brief of Respondent in the COA (see page 21 therein), heavily relied on *Bergeron* as authority that it was likewise not necessary in this matter for the State, when charging Assault 2°, to specify the underlying felony that Petitioner intended to commit in the course of the assault. *Bergeron* is distinguishable and not controlling on an Assault 2° charge, and in fact supports Petitioner's argument.

Bergeron was an attempted burglary case. This Court, explaining its holding, emphasized: "…how can the State be reasonably expected to prove *beyond a reasonable doubt* what

specific crime or crimes were intended to be committed inside a building when entry is attempted but not gained." 105 Wn.2d at 10. (Emphasis in original.) However, unlike the attempted burglary charge in *Bergeron*, here the charge was that of a completed crime.

Bergeron emphasized that because the defendant broke a window, but did not enter the house, it was an attempted crime and that it would be unfair or even impossible for the State to be required to guess what crime the defendant intended to commit:

> The fact the defendant wore gloves on that April morning, and perhaps a concealing hood, is evidence that is every bit as compatible with his having intended to rape the female occupant of the home as it is with his having intended to commit larceny, robbery, murder, assault or arson. To determine which one or more of these crimes was in the defendant's mind when he broke out the window to enter the home would require the sheerest speculation. The fact that courts may be found in other jurisdictions that may be willing to so speculate does not convince us that we should do the same.

Id. at 12.

Additionally, the *Bergeron* Court questioned how, in a jury trial, the trial court could possibly instruct on all the elements of the many possible crimes that the defendant may have intended to commit. *Id.*[8]

Further distinguishing the *Bergeron* holding from the instant case, the *Bergeron* Court wrote that with the operation of RCW 9A.52.040 "Inference of Intent," the trier of fact was permitted to infer that a person unlawfully in a building intended to commit a crime, unless "explained by evidence satisfactory to the trier of fact to have been made without such criminal intent." This was therefore a burden of production as well as proof shifting inference, evincing the legislative intent to not require the State in a burglary prosecution to prove intent to commit an

[8] Although *Bergeron* was a juvenile case, and therefore a non-jury trial, the Court was concerned with how to fashion instructions in future jury trials. This is not a reason that justifies the same concern in an Assault 2° matter where the State must prove intent to commit a felony, rather than any "crime," as required in a burglary case.

underlying crime. In an Assault 2° with intent to commit a felony, there is no inference instruction to aid the prosecution.[9]

The burglary statute requires evidence of an intent to commit any "crime," be it misdemeanor, gross misdemeanor or felony. In contrast, Assault 2°, RCW 9A.36.021(1)(e), requires proof of intent to commit a "felony." Therefore, a jury instruction in an Assault 2° with intent to commit a felony case must specify at least one felony, rather than a burglary case where any "crime," either a misdemeanor or felony will suffice.

This is not just a hyper-technical argument. Otherwise, without this specification, in an Assault 2° case, a juror could erroneously assume that a crime of which the juror might have

[9] However, even if there were such an instruction, it would clearly suffer from constitutional infirmities in that it would permit an inference that if a defendant committed an assault, the jury could infer that he intended to commit a felony. This would clearly be an unconstitutional inference because the inferred fact does not flow more likely than not from the proven fact. *State v. Randhawa*, 133 Wn.2d 67, 77-78 (1997) (permissive inference instruction that court could infer reckless driving solely from excessive speed was unconstitutional).

some passing familiarity, such as a fourth degree domestic violence assault; a trespass; non-deadly threat; a less than $750 theft; or, some other misdemeanor or gross misdemeanor allegation satisfied this requirement.

This is obviously one of the reasons why the WPIC committee recommended that a jury be instructed as to the nature of the specific felony that a defendant charged with Assault 2° under 9A.36.021(1)(e) intended to commit. *See* WPIC 35.11.[10]

Where, as here, the information did not specify the intended felony; the court never announced on the record during the *State v. Newton*, *supra*, plea hearing the factual basis which he found satisfied all the elements of the crime; there was no mention on the record by the prosecutor of the underlying felony; there was nothing in any of the pleadings or stated during the plea

[10] While WPIC Pattern Jury Instructions by themselves are not precedential, they are often cited by this Court in support of its decisions, as this Court did in approving two WPIC instructions in *Bergeron*. *See* 105 Wn.2d at 9.

or sentencing colloquies specifying the underlying felony; the plea was therefore to a non-existent crime and the Judgment and sentencing is facially invalid.

IV. CONCLUSION

Because Petitioner pled guilty to a non-existent crime, his conviction for Assault 2° must be dismissed and he be immediately released.

Alternatively, if the court does not dismiss the conviction as requested, this Court should hold that a life sentence under .507 for a juvenile is cruel punishment under Article 1, Sec. 14. The Court should vacate his .507 sentence and order that he be re-sentenced to a standard range SRA sentence.

Petitioner has served over 20 years in custody. Because the SRA standard range sentence in 2001 was 3 to 9 months for Assault 2° with SM with one juvenile felony conviction for a

non-violent felony (*see* App. A, hereto), order that he be given a standard range sentence and released from custody forthwith.[11]

Petitioner certifies this document contains 4,653 words, excluding those portions exempt under RAP 18.17.

RESPECTFULLY SUBMITTED this 28th day of March, 2022.

/s/ David Allen
David Allen, WSBA #500
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OID #91110

[11] *See* 2001 Assault 2°, SM, scoring sheet attached hereto as Appendix A. Petitioner had one, non-violent, prior felony which would score as ½ point.

PROOF OF SERVICE

I, Sarah Conger, hereby certify that on March 28, 2022, I caused the original *Petitioner's Supplemental Brief in the Washington State Supreme Court* to be filed in the Washington State Supreme Court and a true copy of the same to be served in the following manner indicated below:

☒ PIERCE COUNTY PROSECUTOR'S OFFICE
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☒ Via the Appellate Court E-File Portal

☒ PETITIONER
Li'Anthony Williams

☒ Via United States Mail, Postage Prepaid

Dated at Seattle, Washington this 28th day of March, 2022.

/s/ Sarah Conger
Sarah Conger, Legal Assistant
OID #91110

APPENDIX A

ASSAULT SECOND DEGREE
WITH A FINDING OF SEXUAL MOTIVATION

(RCW 9A.36.021)

CLASS A FELONY

VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.525(16))

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.525).

ADULT HISTORY:

Enter number of sex offense convictions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony convictions ..... _____ x 2 = _____

Enter number of other nonviolent felony convictions ..... _____ x 1 = _____

JUVENILE HISTORY:

Enter number of sex offense dispositions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony dispositions ..... _____ x 2 = _____

Enter number of other nonviolent felony dispositions ..... _____ x ½ = _____

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions ..... _____ x 3 = _____

Enter number of other serious violent and violent felony convictions ..... _____ x 2 = _____

Enter number of other nonviolent felony convictions ..... _____ x 1 = _____

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = _____

Total the last column to get the **Offender Score** (Round down to the nearest whole number)	

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL IV)	3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 - 57 months	53 - 70 months	63 - 84 months

B. If the offender is not a persistent offender, then the minimum term for this offense* is the standard sentence range, and the maximum term is the statutory maximum for the offense. See RCW 9.94A.712.

C. When a court sentences a non-persistent offender to this offense, the court shall also sentence the offender to Community Custody under the supervision of the Dept. of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence. See RCW 9.94A.712.

D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-18 or III-20 to calculate the enhanced sentence.

* The offense must have been committed on or after September 1, 2001.

III. SENTENCING OPTIONS

A. If sentence is one year or less: part or all of the sentence may be converted to partial confinement (RCW 9.94A.680).

B. If sentence is one year or less: community custody may be ordered for up to one year (RCW 9.94A.545).

C. If no prior sex offense conviction and sentence is less than eleven years: Special Sex Offender Sentencing Alternative (RCW 9.94A.670).

ALLEN, HANSEN, MAYBROWN, OFFENBECHER

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